

Kim Dockstader, ISB No. 4207  
Gregory C. Tollefson, ISB No. 5643  
STOEL RIVES LLP  
101 South Capitol Boulevard, Suite 1900  
Boise, ID 83702-5958  
Telephone: (208) 389-9000  
Facsimile: (208) 389-9040  
kdockstader@stoel.com  
getollefson@stoel.com

Attorneys for Defendant Micron Electronics, Inc.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH, MICHAEL B.  
HINCKLEY, JACQUELINE T.  
HLADUN, MARILYN J. CRAIG,  
JEFFERY P. CLEVINGER, and  
TIMOTHY C. KAUFMANN, individually  
and on behalf of those similarly situated,

Plaintiffs,

vs.

MICRON ELECTRONICS, INC., a  
Minnesota corporation,

Defendant.

Case No. CIV 01-0244-S-BLW

**DEFENDANT MICRON ELECTRONICS,  
INC.'S REPLY BRIEF IN SUPPORT OF  
MOTION FOR PROTECTIVE ORDER  
OR, IN THE ALTERNATIVE, MOTION  
FOR EXTENSION OF TIME TO  
RESPOND TO PLAINTIFFS' SIXTH SET  
OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS**

**DEFENDANT MICRON ELECTRONICS, INC.'S REPLY BRIEF IN SUPPORT OF  
MOTION FOR PROTECTIVE ORDER OR, IN THE ALTERNATIVE, MOTION FOR  
EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' SIXTH SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS - 1**

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**ORIGINAL**

Defendant Micron Electronics, Inc. ("MEI" or "Defendant"), by and through its counsel of record, hereby files this Reply Brief in support of its August 6, 2004 Motion for Protective Order, or in the Alternative, Motion for Extension of Time to Respond to Plaintiffs' Sixth Set of Requests for Production of Documents.

Defendant respectfully incorporates its opening briefing on the Motion, found at Court Docket Numbers 249, 250 and 251.

## I. INTRODUCTION

A review of Plaintiffs' Response<sup>1</sup> indicates that there appears to be a fundamental misunderstanding of the issues presented.

Defendant is not acting in "bad faith"<sup>2</sup> and does not seek to avoid its obligations under the federal rules. To the contrary, as will be demonstrated below, Defendant has already previously produced to Plaintiffs all of the documents necessary to allow Plaintiffs' expert to produce the damages report. In fact, with the exception of the requested scanning records,

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<sup>1</sup> Plaintiffs' Response brief has not yet been placed on the Court docket or identified by a docket number. Plaintiffs' responsive briefing was due to be filed on August 30, 2004. On September 3, 2004, Plaintiffs filed a Motion to Extend Time and a supporting affidavit. (Docket Nos. 276-277). Defendant was not consulted regarding the request, but is concurrently filing a notice of non-opposition, despite the fact that the Motion to Extend does not comply with District of Idaho Local Civil Rule 6.1(a).

<sup>2</sup> Plaintiffs' Response goes to great semantic length in attempting to improperly impugn Defendant. For example, the following terms are used: "Without good faith grounds," "spurious," "deliberately misreads," "unjustifiable delaying tactic," "misrepresentations," "specious," "baseless," "pretense of ignorance," "evidence of bad faith," and "frivolous." Such language is not justified and does not appear to comply with District of Idaho Local Civil Rule 83.7.

Plaintiffs already have all of the documents they are seeking by way of their untimely and/or duplicative Sixth Set of Requests for Production.

## II. ARGUMENT

Good cause, as required by Federal Rule of Civil Procedure 26(c), exists for issuance of a protective order.

The deadline for discovery related to class certification issues has passed. (Docket No. 166, ¶ 6). Plaintiffs' Response still fails to provide any reason for Plaintiffs' inordinate delay in serving their Sixth Set of 545 requests for production of documents. It is clear that many of the requested documents which Plaintiffs seek are not related to performing damages calculations.<sup>3</sup>

However, notwithstanding these issues, with the exception of the scanning records, Defendant has already produced to Plaintiffs all of the documents requested, and Defendant does not have any further responsive documents to produce. This fact will be demonstrated below.

Plaintiffs' Sixth Set of Requests for Production (Docket No. 251, at Ex. A) seeks seven separate categories of documents for each claimant listed, for a total of 545 separate requests.<sup>4</sup>

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<sup>3</sup> As an additional deficiency in Plaintiffs' Requests, the Requests seek information for many individuals who are no longer members of the class (persons have opted out, been dismissed, are subject to pending motions for dismissal, or have accepted offers of judgment). There is also a summary judgment motion pending before Judge Winnill regarding whether the two or three year FLSA statute of limitation will be applied. If the two year statute of limitation is applied, as many as twenty additional claimants will be removed from the conditionally-certified class. This summary judgment motion is currently scheduled to be heard by Judge Winnill on October 4, 2004. (Docket No. 275).

<sup>4</sup> Plaintiffs' Sixth Set of Requests for Production is not sequentially numbered to account for previous sets of requests, as required by District of Idaho Local Civil Rule 26.1.

Each request is set forth herein, along with a listing of the documents that have already been produced in response:

**PLAINTIFFS' REQUEST FOR PRODUCTION NO. 1:**

Please produce copies of any and all payroll records, employee statement of earnings, Fiscal Registers showing pay, or other records showing pay pertaining to income earned by [claimant] during [his/her] employment with the Defendant.

*RESPONSE:*

*Documents responsive to this request for payroll records which have already been produced to Plaintiffs include, but are not necessarily limited to: M000559-M001973; M003388-M003499; M005869-M005908; M006071-M00623; M006377-M006556, for a total of 1,909 pages of documents. Defendant has produced all such documents of which it is currently aware.*

**PLAINTIFFS' REQUEST FOR PRODUCTION NO. 2:**

Please produce copies of all records pertaining to commissions or incentives paid to [claimant] during [his/her] employment with the Defendant.

*RESPONSE:*

*Documents responsive to this request for commission records which have already been produced to Plaintiffs include, but are not necessarily limited to: M000001-M000557; M004742-M004743; M004788-M004806; M005805-M005868; M006557-M006677; M008201-M008722, for a total of 1,285 pages of documents. Defendant has produced all such documents of which it is currently aware.*

**PLAINTIFFS' REQUEST FOR PRODUCTION NO. 3:**

Please produce all records of the entry or departure of [claimant] from any facility owned, leased, or otherwise controlled by the Defendant. This request shall include, but not be limited to, records resulting from the swipe of a security badge to enter or exit such a facility.

**DEFENDANT MICRON ELECTRONICS, INC.'S REPLY BRIEF IN SUPPORT OF MOTION FOR PROTECTIVE ORDER OR, IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' SIXTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS - 4**

*RESPONSE:*

*Documents responsive to this request for scanning records have not been produced. The request does not relate to documents for expert discovery and therefore is untimely under Judge Winmill's Scheduling Order. If the case proceeds beyond final certification (hearing set for November 16, 2004), this class discovery issue can be addressed at that time.*

**PLAINTIFFS' REQUEST FOR PRODUCTION NO. 4:**

Please produce copies of all time card, time sheet, and/or Time Sheet List Detail records pertaining to [claimant's] employment with Defendant.

*RESPONSE:*

*Documents responsive to this request for timesheet records which have already been produced to Plaintiffs include, but are not necessarily limited to: M003026-M003387; M004778-M004787; M004807-M004874; M005933-M006070; M006317-M006376; M006678-M006686; M008723-M008935, for a total of 860 pages of documents. Defendant has produced all such documents of which it is currently aware.*

**PLAINTIFFS' REQUEST FOR PRODUCTION NO. 5:** Please produce copies of all e-mails pertaining to or sent to or from [claimant] during all time periods that [he/she] was employed with Defendant.

*RESPONSE:*

*Documents responsive to this request for e-mail records which have already been produced to Plaintiffs include, but are not necessarily limited to: M002989-M002991; M002995-M002996, for a total of 5 pages of documents. However, there are also, in some cases, additional e-mails contained within each person's personnel files (see response to Request No. 7, below). Defendant has produced all such documents of which it is currently aware.*

**PLAINTIFFS' REQUEST FOR PRODUCTION NO. 6:** Please produce copies of instant messages or any other electronic transmissions other than e-mails that either pertain to or were sent to or from [claimant] during all time periods of [his/her] employment with Defendant.

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*RESPONSE:*

*Defendant is not aware of any documents (other than documents already produced to Defendant by Plaintiffs) which are responsive to this request.*

**PLAINTIFFS' REQUEST FOR PRODUCTION NO. 7:** Please produce the personnel file for [claimant] for the period of time while [he/she] was employed with the Defendant.

*RESPONSE:*

*Documents responsive to this request for personnel files which have already been produced to Plaintiffs include, but are not necessarily limited to: M003508-M004741; M004875-M005804; M006233-M006316; M008936-M011193, for a total of 4,506 pages of documents. Defendant has produced all such documents of which it is currently aware.*

The previous detailed production history demonstrates that Defendant has already produced the responsive documents (a total of 8,565 pages of documents) and the documents necessary to prepare any damages computation. The request for scanning records is untimely and can be addressed after Judge Winmill's ruling regarding whether this case continues in litigation as a collective action or otherwise.

### III. CONCLUSION

For the reasons stated herein, and as supported by Defendant's opening briefing, Defendant respectfully requests that the Court grant a protective order requiring Plaintiffs to withdraw their untimely and/or duplicative Sixth Set of Requests for Production of Documents.

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FOR PRODUCTION OF DOCUMENTS - 6**

In the alternative, should the Court deny Defendant's Motion, Defendant respectfully seeks an order granting Defendant a thirty (30) day extension of time from the date of the denial.

Dated this 20<sup>th</sup> day of September, 2004.

STOEL RIVES LLP

  
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Gregory C. Tollefson

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FOR PRODUCTION OF DOCUMENTS - 7**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of September, 2004, I caused to be served a true copy of the foregoing **DEFENDANT MICRON ELECTRONICS, INC.'S REPLY BRIEF IN SUPPORT OF MOTION FOR PROTECTIVE ORDER OR, IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' SIXTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** by the method indicated below, addressed to the following:

William H. Thomas  
Daniel E. Williams  
Christopher F. Huntley  
HUNTLEY PARK LLP  
250 South Fifth Street  
PO Box 2188  
Boise, Idaho 83701-2188  
Fax: 208 345 7894

Via U. S. Mail  
 Via Hand-Delivery  
 Via Overnight Delivery  
 Via Facsimile

  
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Gregory C. Tolleson

**DEFENDANT MICRON ELECTRONICS, INC.'S REPLY BRIEF IN SUPPORT OF MOTION FOR PROTECTIVE ORDER OR, IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' SIXTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS - 8**